IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 107 OF 1998.
AND CROSS OBJECTION NO.1/2000

1. Special Land Acquisition
   Officer, (S.I.P.), I.D. Complex,
   Gogal, Margao, Goa.

2. Executive Engineer,
   Works Division IX,
   Irrigation Department,
   Gogal, Margao, Goa. ... Appellants.

VERSUS

1. Smt.Sushilabai G. Panandikar.

2. Dr. Shashikant G. Panandikar
   (deceased) and his wife:

3. Smt. Priya S.Panandikar.

4. Shri Arvind G. Panandikar,
   and his wife

5. Smt. Aruna A. Panandikar.

6. Shri Ashok G. Panandikar,
   and his wife:

7. Smt. Premlata Panandikar.

8. Shri Gurunath G. Panandikar,
   and his wife,

9. Smt. Smita Panandikar,
   All residents of Colva,
   Salcete, Goa. ... Respondents.

CROSS OBJECTION NO. 1 OF 2000.

Smt. Sushilabai G. Panandikar
and others. ... Cross Objectioners

VERSUS

Spl. Land Acquisition
Officer and another. ... Appellants.

Shri H.R. Bharne, Advocate for the Appellants

Shri V. Menezes, Advocate for the Respondents/Cross Objectioners..

CORAM: N. A. BRITTO, J.

DATE: 7TH APRIL, 2004.

ORAL JUDGMENT:

The State of Goa through the Special Land Acquisition Officer (S.I.P.) and Executive Engineer, Works Division IX has preferred this appeal against the Award of the learned Addl. District Judge (Reference Court), Margao in LAC No.181/90 by which the Reference Court enhanced the compensation at the rate of Rs.24/- per sq.m. The respondents have also filed Cross Objections and have claimed enhancement at the rate of Rs.60/- per sq.m.

2. The appellants by virtue of the notification issued under Section 4(1) of the Land Acquisition Act, 1894 published in Government Gazette dated 14.6.84 acquired land admeasuring 1,47,742 sq.m. situated at Sao Jose de Areal and Mullem for the purpose of construction of Distributory D-2 of Salalulim Irrigation Project and in that was land belonging to the respondents admeasuring 8830 sq.mts. from survey Nos.311/40, 85, 84, 83, 80, 81, 82, 79, 78, 77, 76, 75, 74, 73 72, 71, 69, 68, 60, 52, 48, 43, 308/1 and 309/6 of Sao Jose de Areal village and by Award dated 12.8.1988 the said Special L.A.O. was pleased to award to the respondents compensation at

the rate of Rs.10/- per sq.m. against which the respondents sought reference to be made to the Reference Court, Margao, and the learned Reference Court who decided the reference, fixed the compensation payable at the rate of Rs.24/- per sq.m. relying upon post notification sale deed dated 9.10.85 in respect of plot of land admeasuring 430 sq.m. sold at Rs.75/- per sq.m.

4. The acquired land was situated at Sao Jose de Areal at a distance of about 1.5 kms. from Margao-Quepem road, 2-1/2 kms. from Margao-Housing Board and at a distance of 400 metres from Goa Textile Mills, 1.5 kms. from Margao-Quepem road. It was stated that there was a Chapel at a distance of 200 metres from the acquired land and a Government school at a distance of another 400 metres .

5. The learned Reference Court, as already stated, took the said plot of the sale deed dated 9.10.85 as a guide to fix compensation payable to the acquired land and in fixing the price of the undeveloped acquired land, reduced the price by more than 63%.

6. Admittedly, the plot of the sale deed dated 9.10.85 was not only a post notification sale deed, but was of a plot sold after about 16 months from the

date of notification under section 4(1) of the Act. The first grievance made by the learned Govt. Advocate Shri Bharne is that such a post notification sale deed cannot form the basis to fix the market value for the acquired land and in support of his submission, learned Government Advocate Shri Bharne has referred to an unreported decision of this Court dated 7.1.1998 in First Appeal No.19/95 in the case of State of Goa v. Yolanda D'Costa and also on the case of **Karan Singh and others v. Union of India** (1997) 8 S.C.C., 186. Learned Govt. Advocate Shri Bharne has submitted that once the Sale Deed dated 9.10.85 is taken out of consideration, no evidence remains which is required to be considered and therefore the reference ought to have been rejected by the learned Reference Court.

7. In the said case of State of Goa v. Yolanda D'Costa (First Appeal No.19/95) this Court was referring to sale deeds which were not proved by examining the vendor or vendee and this court observed that in such a situation it was not permissible for the Reference Court to have relied upon any of the sale deeds and the Award which was based on the said sale deeds could not be sustained. In the case of Karan Singh and others (supra) the Hon'ble Supreme Court in para 6 of its judgment,

after relying on another case in **Administrator General of W.B. v. Collector** (A.I.R. 1988 S.C, 943 has observed thus :-

> " It is, therefore, no longer in doubt that in the absence of any evidence of sale of land on the date of issue of notification under Section 4 of the Act, under certain conditions the post-notification transactions of sales of land can be relied upon in determining the market value of the acquired land. One of the conditions being that it must be shown before the Court by reliable evidence that there was no appreciation of the value of land during the period of issue of notification under Section 4 of the Act and the date of transaction of sale which is sought to be relied upon for the purposes of fixing the market value of the acquired land. It has also to be borne in mind that if the claimant relies on any post-notification transaction, the burden is upon him to show that the price of the land remained static and there was no upward rise in the price of the land during the period of issue of notification under Section 4 of the Act and the date of transaction of sale. "

8. The respondents chose not to rely on any sale deeds in respect of sale transactions in the said village Sao Jose de Areal but only to rely upon the said sale deed which was abutting the main road going from Margao to Quepem. Shri Menezes, learned Advocate for the respondents has submitted that in case the respondents had known of any sale deeds they would have relied upon the same. Shri Menezes has next submitted that in this case the appellants had also led evidence and they too did not produce any sale deeds from the said village of Sao Jose de AReal. It is difficult to believe that there were no sale transaction of any land in the said village Sao Jose de Areal prior to the issue of Notification under Section 4(1) of the Act. However, it is to be noted that the burden to prove the case is always upon the person who comes forward before the Court claiming for enhancement. However, learned Advocate Shri Menezes fairly concedes that the respondents had not led any evidence to show that the price of the land had remained static and there was no upward rise in the price of land during the issue of notification under section 4 of the Act and the date of transaction of sale. In my opinion, and as held by the Hon'ble Supreme Court in the case of Karan Singh (supra) in the absence of such evidence, the sale deed dated 9.10.85 which was 16 months later in point

of time from the date of notification, could not have been used as a guide to fix the market value of the acquired land. On this count alone the appeal deserves to succeed and the Cross Objections deserve to be dismissed.

9. Learned Government Advocate Shri Bharne has also referred to the case of **State of Maharashta and others v. Digamber Bhimashankar Tandale and others** (1996) 2 S.C.C., 583 to show that there was no development in the area where the acquired land was situated. In fact it has been observed by the Hon'ble Supreme Court in the said case that there was no dispute that on the date of notification the lands were agricultural lands though situated within the Municipal limits. The Hon'ble Supreme Court also had observed that there was evidence that the lands were converted for non-agricultural purpose. But as on the date of notification there was no development in that area. The oral evidence was adduced in which it was shown that up to a distance of 3/4th km to the lands there was development. Some illegal constructions were made on the lands. Under those circumstances, as on the date of the notification there was no potential value of the lands though converted into non-agriculturallands. However, the said observations which were rendered by the Supreme

Court cannot be imported to the facts of this case because the acquired land has been shown to be at a distance of 1.5 kms. only from the main road proceeding from Margao to Quepem and otherwise was also situated close to Margao Housing Board Colony which was at a distance of about 2-1/2 km. away and there was also a Textile Mills very close to the acquired land, the main Church having been situated at a distance of 1.5 kms. Therefore the contention that the acquired land had no potential for development could not be accepted. Once the principle laid down by the Supreme Court in the said case of Karan Singh and others (supra) is accepted, and, there is no reason why it should not be accepted, the exercise done by the learned Reference Court in fixing the market value of the acquired land cannot be accepted.

10. Once the said sale deed dated 9.10.85 is taken out of consideration and the other sale deed having already been rejected by the learned Reference Court, no evidence had remained in the Reference, for the Reference Court to have enhanced the compensation payable to the respondents.

11. In view of the above, the appeal is bound to succeed and the Cross Objections are bound to be

dismissed. Considering the facts, there will be no order as to costs.

sl. **N. A. BRITTO, J.**